IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 2705 OF 2005.
IN
APPEAL NO. (L) 854 OF 2005.
IN
SUIT NO. 1335 OF 1988.

M/s Chitralekha Builders & anr. .. Appellant.

vs.

G.I.C. Employees Zonal Vihar CHS. .. Respondents.

Shri E.K.Sasidharan for the appellant.

Shri M.P.S. Rao with A.C.Mahimkar for respondent No.1.

Shri Bimal Bhabhada i/b Apte & Co. for respondent Nos. 2 to 53.

CORAM: V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 18.10. 2005.

P.C. :

. The appellants-applicants through this motion are seeking condonation of delay in filing appeal against the order and decree dated 16.2.2001 passed in Suit No. 1335 of 1988; whereby decree for specific performance of the agreement dated 28.4. 1984 in respect of the suit property in which they claim to have interest has been granted.

2. The appellants- applicants- in support of their prayer for condonation of delay has filed affidavit dated 31.8.2005, stating therein that at the time of filing consent terms they were not parties to the suit, as such they could neither object to the consent decree nor could file appeal to challenge or object to the same.

3. The appellants submit that they had taken out Chamber Summons No. 1334 of 2004 to implead themselves as parties to the suit, contending that they have direct and substantial interest in the subject matter of the suit, which came to be rejected by the learned Single Judge vide order dated 26.10.2004. Thereafter, in Appeal No. 598/95 their chamber summons came to be allowed. The plaintiffs were directed to implead appellants/applicants as party-defendants to the suit. Pursuant to the said order, appellants came to be impleaded as defendant Nos. 55 and 56 to the suit. All these events, according to the appellants, led to delay in filing appeal.

. The prayer for condonation of delay was opposed by the respondents. Parties were heard.

4. Having heard the parties, it is not in dispute that the chamber summons taken out by the appellants-applicants was dismissed by the learned Single Judge vide order dated 26.10.2004. The appeal filed by the appellants challenging the said order came to be allowed on 19.8.2005. Impleadment of the appellants-applicants came to be directed considering pendency of the suit between the parties for further reliefs.

5. Prior to the impleadment of the appellants

as parties to the suit, on 16.2.2005 consent terms came to be filed in suit. The same were accepted and recorded by the learned Single judge on the same day i.e. 16.2.2005. Since appellants were not parties to the suit, they could not have preferred an appeal against the consent decree. This appears to be a main cause for not filing appeal within time. In these circumstances, if the appellants could not prefer appeal against the consent decree to which they were not party, one has to conclude that there was a justifiable cause for the appellants not to file appeal within the period prescribed.

6. The appellants-applicants in our opinion, for the aforesaid reasons, had reasonable and sufficient cause for not filing appeal. The delay has been exlained for not filing appeal within prescribed time. Delay in filing appeal is, thus, liable to be condoned.

7. Notice of Motion seeking condonation of delay is, thus, made absolute in terms of prayer clause with no order as to costs.

. The Registry is directed to register the appeal in question filed by the appellants and may place it for admission.